

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14031, of A.D.C. Godavitarne, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the side yard requirements (Sub-section 3305.1 and Paragraph 7105.12) for a proposed addition to an existing semi-detached dwelling, a non-conforming structure, in an R-2 District at premises 5221 Nebraska Avenue, N.W., (Square 1987, Lot 816).

HEARING DATE: September 28, 1983
DECISION DATE: October 5, 1983

FINDINGS OF FACT:

1. The subject application was filed on June 27, 1983, and requested variances from Sub-section 3305.1 and Paragraph 7107.22 regarding the side yard requirements. On July 18, 1983, the Zoning Commission adopted Order No. 403, which amended the Zoning Regulations concerning non-conforming structures. Section 7107 was revised, and Paragraph 7107.22 as revised was incorporated into a new Paragraph 7105.12. Sub-section 8103.6 provides that, in a case where the Zoning Regulations are amended and building permits are authorized by the BZA, the Regulations in effect on the date that the Board decides the case apply. Consequently, the application seeks a variance from Paragraph 7105.12 of the amended Regulations.

2. The subject premises is located on the southeast side of Nebraska Avenue, between Connecticut Avenue and Nevada Avenue, N.W. The site is in an R-2 District and is known as premises 5221 Nebraska Avenue, N.W.

3. The subject site is approximately rectangular in shape. The property is 21.33 feet wide and 135.0 feet deep except for a five foot triangular notch at the rear to facilitate a ninety degree turn in the sixteen foot wide public alley adjacent to the property on the northeast side. The area of the subject lot is 2,866 square feet.

4. The site is improved with a semi-detached brick dwelling. The subject structure has two stories at the front and three stories at the rear because of a downward change in grade from the front to the rear of the lot. The subject structure is 18.33 feet wide and thirty-four feet deep. There is an existing patio adjacent to the rear of

the dwelling. The patio is 16.33 feet wide and ten feet deep.

5. There is access to the subject property from Nebraska Avenue and from the twenty foot public alley at the rear of the property.

6. The subject square is developed with a row of single family dwellings in groups of three. These dwellings front on Nebraska Avenue and face a public park across a twenty foot public alley at the rear. The T-shaped alley bisects the square and provides access for residents to enter their property from the rear or to enter the park across the alley to the southwest.

7. The surrounding neighborhood is developed primarily with low-density and medium-density residential areas. The subject square is located at the southeastern edge of an R-2 District. The area east and north of the R-2 District is zoned R-1-B and merges on the east with Rock Creek Park. To the west of the subject square is the Connecticut Avenue corridor which has alternating segments of R-5-C and C-1 zoning. To the west and southwest of Connecticut Avenue is an extensive R-1-B District.

8. The subject dwelling was constructed in 1954 in conformance with the Zoning Regulations then in effect. The existing side yard on the northeast side of the building is three feet in width as measured from the line of the public alley adjacent to the lot to the edge of the building. The existing rear yard is eighty-six feet in depth. The Zoning Regulations adopted in 1958 required that a side yard have a minimum width of eight feet, thus rendering the subject dwelling a nonconforming structure. The required rear yard depth is twenty feet, leaving the present rear yard in conformance with considerable margin to spare. The existing patio is set back five feet from the side of the alley to the north.

9. The applicant purchased the subject dwelling in 1979 and has occupied it since then as a single family residence. His family includes four persons, three of whom are in permanent residence. The fourth person is a student who visits frequently. The subject dwelling provides three bedrooms, a small kitchen and a dining room that is an extension of the living room area. The applicant finds the dwelling space inadequate in size for the family's needs.

10. The applicant proposes to construct a two story addition on the footprint of the existing patio adjoining the rear of the house. The proposed addition would extend the kitchen and add another bedroom. It would have a height of twenty-seven feet which is approximately two feet below the existing roofline. The enclosed area would include the

first and second floors, with the ground floor unenclosed. The lot occupancy with the addition would be twenty-seven percent. Forty percent occupancy is permitted. The side yard provided for the proposed addition would be five feet in width which would require a variance of three feet or 37.5 percent from the eight foot side yard required by the D.C. Zoning Regulations. The applicant is seeking a variance from this provision of Sub-section 3305.1 in this application.

11. Paragraph 7105.12 of the Zoning Regulations provides that additions may be made to a nonconforming structure provided such structure is conforming as to percentage of lot occupancy, and further provided that the addition or enlargement itself is conforming as to use and structure, does not increase or extend any existing nonconforming aspect of the structure, and does not create any new nonconformity of structure and addition combined. Since the addition is not conforming as to the side yard requirements, a variance from Paragraph 7105.12 is required.

12. The Board of Zoning Adjustment has the power to grant area variances under Paragraph 8207.11 of the D.C. Zoning Regulations which provides:

Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

13. The applicant argued that under Sub-sections 3304.4 and 3305.9 of the Zoning Regulations, the proposed addition qualified for BZA approval.

14. Sub-section 3304.4 provides that "In the case of a building existing on or before May 12, 1958, an extension or addition may be made to such a building into the required rear yard, provided that such extension or addition shall be limited to that portion of the rear yard included in the building area on May 12, 1958." The applicant argued that the patio is a portion of the building area and that therefore, an addition built in the patio footprint would be covered by this sub-section of the Regulations.

15. Sub-section 3305.9 provides that "In the case of a building existing on or before May 12, 1958 with a side yard less than eight feet wide, an extension or addition may be made to such building, provided that the width of the existing side yard is not decreased, and further provided that the width of the existing side yard is a minimum of five feet." The applicant argued that the side yard in question is the five foot side yard between the existing patio and the public alley. Therefore, an addition built in the patio footprint would neither decrease the width of the existing side yard nor involve an existing side yard of less than five feet in width, thus meeting the requirements of this Sub-section.

16. The Board finds that the existing patio is not included in the building area merely by being paved. Building area is defined in Section 1202 of the Regulations and, in pertinent part, means "the maximum horizontal projected area of a building and its accessory buildings." A patio is not a building. Further, the patio is not included in the required rear yard of the premises. The existing rear yard is eighty-six feet in depth. Only the rear twenty feet of this yard are required. Therefore Sub-section 3304.4 is not applicable to this case.

17. The Board finds that Sub-section 3305.9 applies where the building itself has an existing side yard of at least five feet in width. The subject structure has its side wall located three feet from the side lot line, creating a side yard of three feet in width. Sub-section 3305.9 is therefore not applicable to this case.

18. The applicant further argued that in the subject square there are eighteen dwellings which have rear additions and that thirteen of these additions are fully enclosed. He argued that such additions are the norm for the subject neighborhood. The dwelling immediately northeast of the subject dwelling across the public alley has a substantial rear addition that is fully enclosed. In the subject row of houses there are a number of properties which have side yards that face onto an adjacent house, with windows facing each other across a distance of eighteen to twenty feet, whereas the proposed addition will be thirty-one feet from the adjacent dwelling.

19. The applicant also argued that the design of the proposed addition, by remaining within the footprint of the existing patio, would achieve conformity with the other existing rear additions in the subject square. Further, if the proposed addition were designed in accordance with the eight-foot side yard requirement, the side wall on the north would be built at the location of windows in the second floor and basement wall of the existing dwelling. The

proposed five foot side yard would not conflict with any existing windows.

20. The applicant argued that light and air would be adequate for the adjacent dwelling on the northeast side where the variance is needed. The distance between the proposed extension and the dwelling immediately northeast would be thirty-one feet including the five-foot side yard, the width of the alley, and the side yard of the adjacent dwelling.

21. The applicant further testified that the neighbor in the dwelling adjacent to the southwest and the Advisory Neighborhood Commission 3G had been consulted and advised of the plans for the proposed addition. Neither the neighbor nor the ANC had expressed any objection to the proposed. Neither party submitted anything to the record to substantiate this statement of the applicant.

22. The Regulations in effect prior to 1958 allowed the side yard in a residential district to be measured from the centerline of a street or alley if there was a street or alley adjoining the side of the property. Applying that regulation to this case, half of the sixteen-foot wide alley could have been included in the side yard of the building. The eight feet plus the three feet that are on the lot provided for an eleven-foot side yard. The Regulations required a five-foot minimum side yard at that time. The Regulations enacted in 1958 which are now applicable deleted the provision allowing inclusion of half the alley within the required side yard.

23. The existence of other rear additions in the square does not necessarily establish a norm for the neighborhood because these additions may or may not conform to the Zoning Regulations.

24. The applicant did not consider other potential designs for his addition such as 13.33 feet in width by 13.0 feet in depth that could conform with the Zoning Regulations because he had not anticipated any difficulty in obtaining BZA approval for this application based on his aforementioned arguments.

25. Three letters of opposition from neighbors in the subject square were received into the record. The neighbors expressed concern about a negative impact of the proposed addition on the neighborhood. The letters reported that the subject dwelling is part of a group of nine dwellings, built in clusters of three, that were developed together in 1954. The nine dwellings are identical in design. The original developer, a Mr. Donald Hay, retained control of the design of the development by refusing to sell all but three of the dwellings. The developer refused to allow any changes to

the identical design of the row and maintained the open-space quality of the environment. Upon his death, his heirs sold the remaining six residences. Additions were not permitted before the sale of the dwellings and the neighbors objected to such additions as destroying the design coherence of the row.

25. The other concerns of the neighbors included the possibility that the proposed addition could diminish the visibility of traffic turning into the alley behind the houses in the subject square. The alley is extensively used by neighborhood residents as a common space in which to take walks, let children play, walk pets, and enter their parking spaces.

26. The final concern expressed by the neighbors was that not enough information was made available to them for them to judge whether or not the style, design, and material of the addition would be compatible with the dwellings existing in the square. Most of the houses were built in 1940-41. The additions existing in the square do not alter the character of the dwellings. These additions consist of bay windows, sliding doors, and decks.

27. As to the concerns expressed in letters of record in opposition to the application, the Board finds that they are not dispositive of this application. For reasons discussed below, the application fails for lack of a practical difficulty inherent in the property. If the developer intended that that subject row of dwellings remain untouched, he should have provided a covenant of record. The applicant can provide another design for the addition that would conform with the Zoning Regulations. It could be done as a matter-of-right. As to the issue of the use of the public alley by the neighbors, such is not a zoning issue. Also, the purpose of a public alley is not to provide recreation, however, pleasing that may be. As to the issue of lack of information, the Board notes that the record was a public record and available for public perusal.

28. Advisory Neighborhood Commission 3G submitted no report or recommendation on the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the relief requested can be granted without

substantially substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.


The Board concludes that the applicant has not met this burden of proof in showing a practical difficulty inherent in the property. The existing nonconformity of the subject dwelling, although an exceptional condition, does not create a practical difficulty for the owner in building a conforming addition. An addition of the exact dimensions proposed by the applicant could be built in conformity to the regulations by rotating the footprint ninety degrees so that its longer dimension extends into the rear yard and not into the side yard. The maximum width of a conforming addition would be 13.33 feet, which is in excess of the ten feet proposed for the short side of the addition. In addition, the Board concludes that the applicant's difficulties as set forth are personal to him, and do not arise out of the property.

As to the special regulations cited by the applicant governing nonconforming structures, the Board concludes that the applicant's property does not meet the requirements of either Sub-sections 3304.4 and 3305.9 of the D.C. Zoning Regulations. Those Sub-sections, on which the applicant relied, are not applicable in the subject situation. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 3-0 (Douglas J. Patton, Maybelle T. Bennett and William F. McIntosh to deny; Carrie L. Thornhill abstaining; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

FEB - 6 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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